

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., *et al.*,

Defendants.

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Case No. 4:05-CV-00329-GKF-PJC

**STATE OF OKLAHOMA’S UNOPPOSED MOTION FOR EXTENSION OF TIME FOR
THE STATE TO CONDUCT THE DEPOSITIONS
OF DEFENDANTS’ DAMAGES EXPERTS**

COMES NOW Plaintiff, the State of Oklahoma (“the State”), and respectfully requests a 29-day extension of the discovery period for the limited purpose of taking the depositions of Defendants’ damages experts.¹ A 29-day extension is requested to mirror the extension granted to Defendants to produce their expert damages reports, and to restore the State to the position it was in prior to Defendants being granted an additional 29 days to produce their expert damages reports.

Pursuant to the scheduling order in this case, Defendants’ expert reports on damages were due on March 2, 2009. *See* Dkt. #1376. On February 13, 2009, Defendants filed a motion to compel materials pertaining to the State’s Contingent Valuation study (hereinafter “CV Report”) and, based upon this motion to compel, a motion for extension of time to serve their expert reports on damages. The State filed a motion for protective order regarding the same materials. The Court provided Defendants with an extension to March 30, 2009 for their expert reports on damages while these motions were pending. *See* Dkt. #1895. On March 11, 2009, the Court

¹ On March 23, 2009, Defendants agreed to the extension of time requested by the State herein.

issued an order denying Defendant's motion to compel, granting the State's motion for protective order, and extending Defendants' deadline for expert reports to March 31, 2009 (Dkt. #1918). The current discovery cut-off date is April 16, 2009. *See* Dkt. #1658.

Fed. R. Civ. P. 16(b) states that "[a] schedule shall not be modified except upon a showing of good cause and by leave of the district judge or, when authorized by local rule, by a magistrate judge." The revised schedule allowing Defendants until March 31, 2009 to produce their expert damages reports -- which was precipitated by their bringing an unsuccessful motion to compel -- has severely cut into the State's time under the current scheduling order to conduct discovery of Defendants' damages experts.

Specifically, prior to the extension of the deadline for Defendants' expert reports on damages to March 31, 2009, the State had 45 days upon receipt of Defendants' damages reports to review the damages reports and corresponding materials, and to prepare for and take their depositions. *See* Dkt. #1376 (Amended Scheduling Order); Dkt. #1658 (Order setting discovery cut-off). With the extension of Defendants' deadline for filing expert reports on damages to March 31, 2009, the State is now limited to only 16 days (which includes two weekends, one of which is the Easter holiday) to accomplish this task. These circumstances clearly establish good cause for a 29-day extension limited to these depositions.

Thus, the State requests that the Court provide the State with a 29-day extension of the April 16, 2009 discovery cut-off for the limited purpose of taking the depositions of experts involved in the Defendants' damages reports. This 29-day extension will restore the State's 45-day time period to prepare for and take these depositions, which was the time period originally contemplated for this task in the previous scheduling orders (Dkt. #1376 and Dkt. #1658). In addition, this narrow extension will not impact any other dates in the scheduling order and it will

not disturb the September 2009 trial date.

Furthermore, underscoring the prejudice the State will suffer under the current schedule, Defendants, despite having had the State's expert damages reports since January 5, 2009, have rejected the State's first and second offers of deposition dates for all authors of the CV Report. These dates would have enabled Defendants to complete these depositions prior to the deadline for their expert reports on damages. *See* Ex. 1 (Xidis/ Ehrich email exchange). On March 13, 2009, Defendants proposed taking the depositions of the seven authors of the CV Report during the first two weeks of April. Because Defendants rejected the previous dates offered for these depositions, these depositions will have to take place during the first two weeks of April in order to complete them before the April 16 discovery cut-off. Thus, the two weeks between March 31 and April 16 will most likely be consumed with the depositions of the State's damages experts. This will severely limit the time available to the State to review Defendants' damages expert reports and corresponding materials, and to prepare for and take Defendants' experts' depositions. By providing the State with a 29-day extension for this limited purpose, the State's original time period for deposing Defendants' damages experts will be reinstated, Defendants will be able to take the depositions of the CV Report authors during the first two weeks of April as they have requested, and neither party will suffer prejudice.

For the reasons stated herein, the State respectfully requests a 29-day extension of the discovery period for the limited purpose of taking the depositions of Defendants' damages experts.

Respectfully Submitted,

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